



July 12, 1999

Mr. Richard S. Rafes
Vice Chancellor and General Counsel
University of North Texas
P.O. Box 310907
Denton, Texas 76203-0907

OR99-1916

Dear Mr. Rafes:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 125664.

Dr. Jose Perez, a faculty member in the Physics Department at the University of North Texas (the "university") received a request from Dr. Samuel Matteson, the Chair of the Physics Department, for a copy of the tape recording of the conversation Dr. Perez and Dr. Matteson had on March 12, 1999. Dr. Perez's personal attorney advised him that the tape recording was not subject to disclosure under the Act. Relying on this advice, Dr. Perez denied the request. Dr. Perez did not forward the request to the university's Legal Affairs Office in accordance with university policy. Dr. Matteson then submitted the same request directly to the Legal Affairs Office. You ask us to determine whether the tape recording is subject to disclosure under the Act.

Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Dr. Perez's personal attorney contends that the tape recording is the personal property of Dr. Perez and is, therefore, not within the definition of public information. Relevant factors to be considered in determining whether a personal document is subject to the Act include, but are not limited to: who prepared the document; who possesses or controls the document and who has access to it; the nature of its contents; whether the document is used in conducting the business of the governmental body; and whether public funds were expended in creating or maintaining the document. Open Records Decision No. 635 (1999).

Dr. Perez has refused the university access to the tape recording. You inform us that the tape recording is of a conversation that Dr. Matteson had with Dr. Perez in Dr. Perez's office concerning "an on-going grievance proceeding between Dr. Perez and another faculty member." You also state that Drs. Perez and Matteson were acting in their official capacities when they had the discussion. The submitted documents indicate that Dr. Perez "recorded [the conversation] on [his] personal tape recorder using [his] personal tape both of which [he] store[s] in [his] personal attache case." Having carefully considered all of the facts, we find that the tape recording is not within the definition of public information and is not subject to disclosure under the Act. Therefore, the Act does not entitle Dr. Matteson to a copy of the tape recording.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script, reading "Karen Hattaway".

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 125664

cc: Dr. Samuel E. Matteson, Chair
Department of Physics
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